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OFFICE OF PETITIONS

In re Application of  
Klony Lieberman et al  
Application No. 09/866,859  
Filed: May 29, 2001  
Attorney Docket No. U 013492-2

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 21, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed December 16, 2004 which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). The amendment submitted on March 21, 2005 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed April 19, 2005. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed, and no extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on March 17, 2005.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;

- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)).

The instant petition does not satisfy requirement (1) above. ■

As to item (1), petitioner has not submitted a request for continued examination (RCE) under 37 CFR 1.114 as a reply to the final Office action. However, there is no indication that a submission as required by 37 CFR 1.114 was filed. Therefore, this application cannot be revived until a proper reply has been received.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop PETITIONS  
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By fax:                        (703) 872-9306 <sup>1</sup>  
                                    ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

  
Wan Laymon

Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>1</sup> Effective July 15, 2005, the fax number will be 571-273-8300